

## **A Voluntary Regional Agreement**

**Between**

**The Columbia-Snake River Irrigators Association (CSRIA)**

**And**

**The Washington State Department of Ecology (Ecology)**

### *A. Preamble: A Commitment to a Voluntary Regional Agreement (VRA)*

CSRIA and Ecology are hereby engaging in a voluntary regional agreement (VRA), as authorized under ESSHB 2860 (Columbia River Bill) (Chapter xx, Session Laws of 2006). This VRA is intended to result in the approval of new water use on the Columbia River and Lower Snake River (at or below the Ice Harbor Pool) by the State of Washington. Consistent with the legislation enacted during the 2006 Legislative Session, new water uses resulting from the issuance of permits under this agreement shall not reduce streamflows in the Columbia River mainstem or on the Snake River mainstem during the critical periods established by the legislature. To meet this standard of protection, Ecology and CSRIA will pursue water conservation and other measures in a quantity sufficient to fully offset any new water uses in the months of July and August approved by the state for CSRIA members under this agreement.

This VRA consists of the following set of mutual obligations:

### *B. Addressing Interruptible Water Rights on the Mainstem*

- CSRIA members shall install or maintain water use efficiency practices (BMPs) for the affected rights and permanently transfer any conserved water that results from improvements to the state trust program.
- For members interested in acquiring supplemental drought permits, CSRIA shall submit all water rights held by these parties to Ecology for recalibration, if necessary, to reflect actual beneficial use levels. As stated above, any portion of the right deemed by Ecology to have been saved as a result of implementing BMPs or saved by other means, shall be permanently transferred to the state trust program.

- CSRIA and its members will actively support any and all water supply options identified and pursued by Ecology to provide mitigation water for supplemental drought permits.
- CSRIA and its members understand and agree that Ecology must ensure that any water use under permits issued to CSRIA members pursuant to this agreement meet the requirements of Section 4(2)(a) of the Columbia River Bill and the criteria of applicable water law, including RCW 90.03.290.
- Ecology commits to issue new uninterruptible water rights (supplemental drought permits) effective during the periods in which existing rights would be interrupted based on applications filed by CSRIA on behalf of its members, or individual CSRIA members, provided that Ecology determines during its processing of the applications that conserved water from the water efficiency practices, and/or other mitigation mutually agreed to by the parties, shall ensure that water use under the supplemental drought permits shall meet the requirements of Section 4(2)(a) of the Columbia River Bill and the criteria of applicable water law, including RCW 90.03.290. Mitigation through water savings resulting from water efficiency practices, or other means, must accrue either before or at the same time that water use under the supplemental drought permit occurs.
- Ecology will make a good faith effort to provide the mitigation water necessary to ensure that any new rights issued in the form of supplemental drought permits will not impair the Columbia in low flow years as defined in the existing permits, consistent with the provisions of policy legislation enacted by the 2006 Legislature.

### *C. Issuing New Water Rights Based on Conserved Water*

CSRIA commits to the following:

- CSRIA members agree to pay \$10 per acre foot of water by March 1 of each year to Ecology for the full amount of water used under the permit in the previous year as determined through metering records. The first payment, calculated based upon the full quantity of the issued right, will cover the first 3 years of eligible use of water under a permit, and shall be made to Ecology at the time the permit is issued by the agency. The payment described herein shall ensure reimbursement to Ecology for conservation projects funded in advance by the state.
- CSRIA and its members understand and agree that Ecology must ensure that any water use under permits issued to CSRIA members pursuant to this agreement meet the requirements of Section 4(2)(a) of the Columbia

River Bill and the criteria of applicable water law, including RCW 90.03.290.

- CSRIA members that obtain new permits shall install or maintain water efficiency practices (BMPs) for all their existing rights in perpetuity and permanently transfer any conserved water that results from improvements to the state trust program.
- For members interested in acquiring new permits, CSRIA shall submit all water rights held by these parties to Ecology for recalibration, if necessary, to reflect actual beneficial use levels. As stated above, any portion of the right deemed by Ecology to have been saved as a result of implementing BMPs or saved by other means, shall be permanently transferred to the state trust program.
- CSRIA will work with Ecology to identify the most cost-effective and feasible water efficiency projects that can be implemented in a time frame and in a location that would allow water, and associated rights, to be used to mitigate for new water rights authorized by Ecology.
- CSRIA will support Ecology efforts to effectuate targeted water conservation projects, or other mutually agreed upon mitigation projects, utilizing funds paid by CSRIA members to Ecology under the fee structure described above.
- CSRIA will either file applications to Ecology for new water right permits on behalf of its members, or support applications to Ecology made by its individual members.
- CSRIA or its members will document, in application support materials, that the water use requested under applications for water right permits meets the requirements of Section 4(2)(a) of the Columbia River Bill and the criteria of applicable water law, including RCW 90.03.290.
- For CSRIA's municipal members and other municipal entities, the following points are adopted for new water rights and those pending development:
  - 1) A municipal supply purpose shall also mean any requirements to meet mitigation conditions in an existing municipal water right permit.
  - 2) Municipal and utility water efficiency standards may be considered as one option for best management practices.
  - 3) Nothing in this Agreement shall supersede the terms of the Settlement Agreement in *Center for Environmental Law and Policy v. Department of Ecology*, and the subsequent water right

permit issued by Ecology subsequent to that agreement, Surface Water Permit No. S4-30976P.

Ecology commits to the following:

- Ecology will work with CSRIA and other parties to identify the most cost-effective and feasible water efficiency projects that can be implemented in a time frame and in a location that would allow the water, and associated rights, to be used as mitigation for applications for new water rights made by CSRIA members.
- Ecology will enter into agreements with water users and/or owner/operators of water delivery systems to effectuate targeted water conservation, and/or other mutually agreed upon mitigation projects, utilizing funds provided by the state and CSRIA members under this agreement.
- Ecology will deposit revenue received from CSRIA or its members into the Columbia River Basin Water Supply Development Account established in the Columbia River Bill.
- Payments made by CSRIA or its members will be adjusted annually for inflation by Ecology, using the implicit price deflator or other appropriate index agreed to by the parties to ensure that the payments will provide reimbursement to the state for conservation projects that have been developed.
- Ecology will ensure that any new water rights issued under this agreement meet the requirements of Section 4(2)(a) of the Columbia River Bill and the criteria of applicable water law, including RCW 90.03.290. Mitigation through water savings resulting from water efficiency practices, or other means, must accrue either before or at the same time that water use under the supplemental drought permit occurs.
- Ecology will process applications for new water rights in as timely a manner as possible, in accordance with applicable law and dependent upon the resources made available for this task by the Legislature.
- In order to speed processing of water right applications, CSRIA or its members may enter into a cost reimbursement agreement with Ecology to enable priority processing of applications, to the extent authorized by applicable law. **Consistent with WAC 173.152.050, Ecology recognizes that applications that if approved would substantially enhance or protect the quality of the natural environment qualify for expedited processing.**

### **AGREEMENT ALTERATIONS AND AMENDMENTS**

This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **TERMINATION**

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

### **TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

### **DISPUTES**

Prior to terminating this agreement, the parties agree to select a mutually acceptable mediator to help resolve any disputes which have arisen. Following mediation, a party may then proceed to terminate the agreement if a dispute remains unresolved.

### **GOVERNANCE**

This agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules; and
- b. any other provisions of the agreement, including materials incorporated by reference.

### **ASSIGNMENT**

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The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

## **WAIVER**

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

## **SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

## **ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

*This Voluntary Regional Agreement Approved By:*

*Representing the Washington State Dept. of Ecology:*

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*Jay Manning, Director, Ecology*

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*Date*

*Representing the Columbia-Snake River Irrigators Association:*

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*R. Thomas Mackay, President, CSRIA*

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*Date*

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*Darryll Olsen, Ph.D., CSRIA Board Rep.*

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*Date*